

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY**

Plaintiff

V.


**FREEHOLD MANAGEMENT,
INC. AND RETAIL PLAZAS, INC.**

Defendants


V.

**FREEHOLD MANAGEMENT,
INC., RETAIL PLAZAS, INC., AND
RPI DENTON CENTER, LTD.**

Counter-Plaintiffs

























CIVIL ACTION No.
3:16-cv-02255-L

**DEFENDANTS AND COUNTER-PLAINTIFFS' AMENDED MOTION TO
STRIKE THE EXPERT TESTIMONY OF TIMOTHY MARSHALL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants, Freehold Management, Inc. and Retail Plazas, Inc., and Counter-Plaintiffs, Freehold Management, Inc., Retail Plazas, Inc., and RPI Denton Center, LTD. (hereafter collectively “Freehold” or “the Freehold Entities”) file this amended motion to strike the expert testimony of Timothy Marshall. In support of this motion, the Freehold Entities would show this honorable Court the following

The opinion testimony of Plaintiff's designated expert, Timothy Marshall, is not reliable under the *Daubert* standard. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993). As a result, this testimony should be stricken. *Id.* As discussed in the brief in support of this motion, Timothy Marshall's opinions in this case are unreliable

as they are based on unreliable data and methodologies. As a result, the opinions will not help the jury and are not admissible under Federal Rule of Evidence 702. *See* FED. R. EVID. 703.

WHEREFORE, PREMISES CONSIDERED, Defendants/Counter-Plaintiffs pray that this Court grant their amended motion to strike the expert testimony of Timothy Marshall; refuse to allow Timothy Marshall to provide expert testimony at trial; and award Defendants/Counter-Plaintiffs such other relief as may be proper.

Respectfully submitted,

Loree & Lipscomb,
777 E. Sonterra Blvd., Suite 320
San Antonio, Texas 78258
Telephone: (210) 404-1320
Facsimile: (210) 404-1310

By: /s/Todd Lipscomb
Robert W. Loree
State Bar No. 12579200
rob@lhllawfirm.com
Todd Lipscomb
State Bar No. 00789836
todd@lhllawfirm.com
Cassandra Pruski
State Bar No. 24983690
cassie@lhllawfirm.com

Attorneys for Freehold Entities

CERTIFICATE OF CONFERENCE

On August 6, 2018, the Defendants and Counter-Plaintiffs' counsel, Todd Lipscomb conferred with Plaintiff's counsel, Kaitlyn Kerr by phone. Ms. Kerr indicated that Plaintiff is opposed to relief requested by this motion, so it is presented for the Court's review.

/s/ Todd Lipscomb
Todd Lipscomb

CERTIFICATE OF SERVICE

I certify that the Freehold Entities have served a true and correct copy of the foregoing document on August 29, 2018 through the Court's electronic filing (CM/ECF) system and by facsimile transmission to the following counsel of record:

Charles B. Mitchell, Jr.
Michael Shane O'Dell
Naman, Howell, Smith & Lee, PLLC
405 Forth Worth Club Building
306 West 7th Street
Fort Worth, Texas 76102-4911

/s/ Todd Lipscomb
Todd Lipscomb